

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
LUFKIN DIVISION

CHESTER H. TRIDLE, JR., ET AL. §
Vs. § CIVIL ACTION NO. 9:07CV213
UNION PACIFIC RAILROAD COMPANY §

ORDER

On October 10, 2007, United States Magistrate Judge Judith Guthrie conducted a hearing on Plaintiff's Amended Motion for Emergency Hearing and Temporary Restraining Order and/or Protective Order and Motion for Attorney's Fees. On the same date, Judge Guthrie issued an Order granting Plaintiff's Motion for Protective Order and Motion for Attorney's Fees. On October 23, 2007, Defendant filed a Motion for Reconsideration of and Objections to the Magistrate Judge's Order (document #18). Plaintiff seeks reconsideration by the district judge of Judge Guthrie's Order pursuant to 28 U.S.C. § 636(b)(1)(A) and the Local Rules of Court for the Assignment of Duties to United States Magistrate Judges, Rule 4(A). Pursuant to 28 U.S.C. § 636(b)(1)(A) and the Local Rules of Court for the Assignment of Duties to United States Magistrate Judges, Rule 4(A), a district judge may set aside all or part of a magistrate judge's order on a pretrial matter if it is shown that the magistrate judge's order is clearly erroneous or contrary to law.

This is a lawsuit filed by railroad employees seeking relief pursuant to the Federal Employers' Liability Act. Plaintiffs allege that they have suffered injuries as a result of cumulative

and/or repetitive exposure to ergonomic risk factors throughout the course of their employment. In his motion seeking a protective order, Plaintiff Bobby Conner asserts that Union Pacific contacted him directly concerning medical records requests after being notified that he is represented by an attorney for cumulative trauma disorder claims allegedly arising from his employment and after filing this lawsuit. He received notices to appear for an investigative hearing concerning a charge that he allegedly failed to provide certain medical documentation. He was warned that failure to comply may result in termination of his employment.

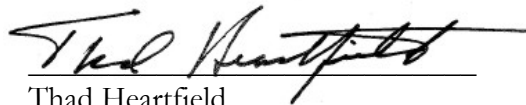
Conner is now a litigant in a federal lawsuit and the Federal Rules of Civil Procedure establish parameters and protections for discovery. Document disclosures and testimony to be provided by Conner relating to his medical condition and medical records that are at issue in this lawsuit are governed by Fed.R.Civ.P. 26. The Magistrate Judge correctly determined that the matter at issue in the motion for protective order is whether it is appropriate for Union Pacific to contact Conner, an individual represented by counsel in this lawsuit, directly to seek medical documentation and to proceed with a hearing, without counsel, concerning his alleged failure to provide those medical records. It does not require an interpretation of the CBA and preemption pursuant to the Federal Railway Labor Act does not apply. *Bernal v. Southern Pacific Transportation Company; Union Pacific Railroad*, 196 F.R.D. 371, 373 (E.D.Cal.2000) (citing *Riensch v. Union Pacific Railroad Co.*, 12 F.Supp.2d 1136, 1139-40 (D.Col.1998)). Although not controlling in this district, the *Bernal* decision is well reasoned and its analysis is applicable in this case.

The Order entered by Judge Guthrie directed that Union Pacific Railroad Company may not compel Bobby Conner to provide personal medical information and/or records relating to the subject matter of this litigation, except in accordance with the Federal Rules of Civil Procedure, nor shall

Union Pacific Railroad Company take any disciplinary action against Bobby Conner for his noncompliance with such requests. Having reviewed the pleadings, I find that Defendant has not shown that Judge Guthrie's Order granting Plaintiff's Motion for Protective Order and Motion for Attorney's Fees is clearly erroneous or contrary to law. It is therefore

ORDERED that Defendant's Motion for Reconsideration of Magistrate Judge's Order (document #18) is **DENIED** and Defendant's objections to the Magistrate Judge's Order are **OVERRULED**.

SIGNED this the 6 day of **November, 2007**.

A handwritten signature in black ink, appearing to read "Thad Heartfield", written over a horizontal line.

Thad Heartfield
United States District Judge